fact. There was ample evidence on which he could reach the conclusion which he did, that Hooi Sooi Wan is the principal wife of Datuk Yeap and therefore the plaintiffs are entitled to share in the residuary income of the estate of the testator. Accordingly, we would dismiss the appeal with costs. Deposit to plaintiffs to account of taxed costs.

*Appeal dismissed.*

Solicitors: *Goh Guan Ho; Lim Kean Siew & Co; Tan, Yu & Co.*

Reported by *Prof Ahmad Ibrahim*

## Teh Geok Hock v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) - CRIMINAL APPEAL NO 72 OF 1987
HASHIM YEOP A SANI CJ (MALAYA), HARUN HASHIM AND MOHAMED YUSOFF SCJJ
21 JULY 1989

*Criminal Law - Dangerous drugs - Trafficking in - Defence that drug was for own consumption and not for trafficking - Whether accused being an addict could also be a drug trafficker - Meaning of trafficking - Burden on accused to rebut presumption - Dangerous Drugs Act 1952, ss 2, 37 & 39B*

*Evidence - Presumption - Burden on accused to rebut - Dangerous Drugs Act 1952, ss 2, 37 & 39B*

*Words and Phrases - 'Trafficking' - Dangerous Drugs Act 1952, s 2*

In this case the appellant had been charged with trafficking in a dangerous drug, to writ, heroin. When the appellant was arrested he had ten small plastic packets of heroin concealed in the front part of his underpants. The defence of the appellant was that he was at the material time a severe drug addict and that the heroin found on him was for his own consumption. The learned trial judge accepted the evidence of the defence that the appellant was a drug addict on the day of his arrest and that in all probability the addition was quite severe. The learned judge however considered whether the appellant, being an addict, could not also be a drug trafficker within the meaning of the Act. After considering the evidence he rejected the explanation on the ten packets of heroin found on the person of the appellant and was satisfied that the appellant was trafficking in the drugs as charged and convicted the appellant. The appellant appealed.

**Held,** dismissing the appeal:

(1) The definition of 'trafficking' in the Dangerous Drugs Act is wide and includes not only buying and selling but also carrying, concealing and keeping.

(2) Considering the case from the evidence of both the prosecution and the defence the facts proved fall squarely into the definition of trafficking in the Dangerous Drugs Act. The appellant was found in possession, custody and control of the heroin the weight of which is more than 15 g. This invoked the presumption of trafficking under s 17 of the Act. There is the undisputed evidence of concealment. The appellant also admitted that he bought the drugs for his friends and that he would distribute the drugs to his friends. Finally in his cautioned statement he stated he wanted to sell the drugs to a person he named.

(3) Although the concluding paragraph of the judgment of the learned judge was not couched in clear language to reflect the proper test to be applied, however after reading the whole of his judgment the court was satisfied that what the learned judge meant to say was that having viewed the totality of the evidence he was satisfied that the presumption of trafficking was not rebutted on a balance of probability.

(4) There was ample evidence in this case to convict the appellant on a charge of trafficking in a dangerous drug under the Act and the appeal is accordingly dismissed and the sentence confirmed.

**Cases referred to**

1 *Ong Ah Chuan* v *PP* [1981] 1 MLJ 64 (refd)
2 *PP* v *Yuvaraj* [1969] 2 MLJ 89 (refd)
3 *Akin Khan bin Abdul Rahman* v *PP* [1987] 2 MLJ 217 (refd)

**Legislation referred to**

Dangerous Drugs Act 1952 ss 2, 37, 39(B)(2)
Misuse of Drugs Act (Cap 185, 1985 Ed) [Sing]

*Sidney Augustin* (*K Siva Segara* with him) for the appellant.
*Ng Aik Guan* (Deputy Public Prosecutor) for the respondent.

*Cur Adv Vult*

**Hashim Yeop A Sani CJ (Malaya)** (delivering the judgment of the court): The appellant is charged under s 39B(1)(a) of the Dangerous Drugs Act 1952 ('the Act') that on 20 December 1983 at about 12.50am at No 8, Tepian Loke Yew, Off Jalan Loke Yew, Kuala Lumpur did on his own behalf traffic in a dangerous drug, to wit, 36.97 gm of heroin, thereby committing an offence punishable under s 39B(2) of the Act.

Immediately before his arrest the appellant was with three other male Chinese in a Honda Civic car bearing registration no AAK 2646 which was stopped by the police at the place mentioned in the charge. The appellant was at the time of his arrest 20 years 10 months old.

Throughout the trial the appellant never disputed the fact that at the time of his arrest he had ten small plastic packets of heroin concealed under the front part of his underpants. The packets contained a total of 86.74 g nett of a light brown powdery substance which on analysis the chemist found to contain 36.97 g of heroin.

The prosecution's case was straightforward. The heroin being 36.97 g, the appellant was presumed under s 37(da)(i) to have been trafficking in the drug until the contrary is proved. Thus the learned judge called upon him to make his defence. The appellant gave his evidence on oath and also called five other witnesses. The crux of his defence is that he was at the material time a drug addict, and a severe one at that, and that the heroin found

on his person was for his own consumption. Defence counsel both in the court below and before us valiantly canvassed the proposition that since there was overwhelming evidence that the appellant was a hardcore addict at the time of his arrest, the presumption of trafficking has been rebutted on the balance of probability and that the heroin found on him was for his own consumption and not for trafficking.

It seems quite clear to us that the learned judge accepted the evidence of the defence that the appellant was a drug addict on the day of his arrest and that in all probability the addiction was quite severe. Then the learned judge asked himself whether the appellant, being an addict, could not also have been a drug trafficker within the meaning of the Act.

To satisfy himself the learned judge considered the evidence of the defence relating to the ten packets of heroin found concealed on the person of the appellant. The learned judge found from the evidence that the appellant's drug addiction required him to use half a packet of heroin a day. The appellant in his evidence said that the whole amount would last him 30 days. He also said that he bought the ten packets to share with his two friends and that the two friends had also contributed towards the purchase. Under cross-examination the appellant said that he had contributions from his friends to buy the ten packets of heroin which cost $600.

The defence also relied on the cautioned statement of the appellant made to DW2, Insp Saliman. He said he gave the statement voluntarily. The intention of the defence was to show by way of a voluntary statement that the appellant was a drug addict. However in the cautioned statement itself in response to the question, 'Mengapa dadah yang didapati pada kamu itu banyak?' ('Why was the amount of drug found on you so much?') the reply by the appellant was, 'Sebab saya hendak jual kepada Saw Chai yang bekerja di Paris Pub.' ('Because I wanted to sell to Saw Chai who was working in Paris Pub'.)

It is quite clear then that although the learned judge accepted the evidence that the appellant was a drug addict, he rejected his explanation of the ten packets of heroin found on his person. He was satisfied that the appellant was trafficking in the drugs as charged and convicted the appellant. 'Trafficking' is defined in the Act as follows:

> 'Trafficking' includes the doing of any of the following acts, that is to say, manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug.

True, the definition in the Act sounds artificial and not according to the ordinary meaning of the word 'trafficking' which is normally understood to mean to trade in, buy or sell, any commodity, albeit often with sinister implication. See also the *Shorter Oxford English Dictionary*. The definition of 'trafficking' in the Act is wide and includes not only buying and selling, but also carrying, concealing and keeping. It is totally different from the definition of the word 'traffic' in the Singapore Misuse of Drugs Act. In the Singapore provision to 'traffic' in a controlled drug so as to constitute an offence of trafficking involves something more than passive possession or self-administration of the drug. See *Ong Ah Chuan* v *Public Prosecutor*.[1]

Considering this case from the evidence of both the prosecution and the defence the facts proved fall squarely into the definition of 'trafficking' in our Act. The appellant was found in possession, custody and control of the said heroin the weight of which is more than 15 gm. This invoked the presumption of trafficking under s 37 of the Act. There is the undisputed evidence of concealment (ten packets of the heroin found concealed in the underpants of the appellant). The appellant also admitted that he bought the drugs for his friends and that he would distribute the drugs to the friends. Finally in his cautioned statement he stated that he wanted to sell the drugs to one Saw Chai working in Paris Pub.

To digress a little we would like to point out that the concluding paragraph of the judgment of the learned judge was not couched in a clear language to reflect the proper test to be applied. See *PP* v *Yuvaraj*.[2] However, after reading the whole of his judgment we are satisfied that what the learned judge meant to say was that having viewed the totality of the evidence he was satisfied that the presumption of trafficking was not rebutted on the balance of probability. This court had occasion to deal with a similar language lapse in a case also under s 39B(2) of the Act (*Akin Khan bin Abdul Rahman* v *PP*[3]) which also referred to *PP* v *Yuvaraj*.[2]

In this case there was ample evidence to convict the appellant on a charge of trafficking in a dangerous drug under the Act. The appeal is accordingly dismissed and the sentence confirmed.

*Appeal dismissed.*

Solicitors: *Augustin Negrin & Co.*

Reported by *Prof Ahmad Ibrahim*